

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

UNITED STATES OF AMERICA

v.

WALTER MARTIN

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**No. 3:05-CR-45
(Phillips)**

ORDER

On August 29, 2005, the Honorable C. Clifford Shirley, United States Magistrate Judge, filed a 30-page Report and Recommendation (R&R) [Doc. 21] in which he recommended that defendant's motion to suppress evidence [Doc. 12] be denied. This matter is presently before the court on defendant's objections to the R&R [Doc. 23]. The court notes that defendant's objections were untimely filed. Any objections to the report and recommendation were required to be served and filed within ten (10) days after service of a copy of the R&R on the objecting party. Nevertheless, the court will consider defendant's objections as if they were timely filed. The defendant will not be prejudiced by his counsel's lack of diligence.

As required by 28 U.S.C. § 636(b)(1), the court has now undertaken a *de novo* review of those portions of the R&R to which defendant objects. After doing so, the court readily concludes that Judge Shirley has thoroughly and correctly analyzed the legal

issues presented in defendant's motion to suppress. Thus, any further comment by the court is unnecessary and would be repetitive. In sum, the court finds that (1) the officer had probable cause to believe that defendant had committed a parking violation; (2) the officer had a particularized reasonable suspicion that defendant could be armed and dangerous, thus the *Terry* frisk for weapons was proper; (3) the statements defendant made prior to being arrested were volunteered by defendant and not subject to *Miranda* warnings; and (4) the statements defendant made while detained in the police car following his arrest but before he was advised of *Miranda* warnings were also volunteered and not subject to suppression due to the absence of *Miranda* warnings.

Accordingly, defendant's objections [Doc. 23] are hereby **OVERRULED** in their entirety, whereby the R&R is **ACCEPTED IN WHOLE**. Thus, defendant's motion to suppress evidence [Doc. 12] is **DENIED**.

ENTER:

s/ Thomas W. Phillips
United States District Judge